THE HON'BLE Mr. JUSTICE N.V. RAMANA

Writ Petition No.2766 of 2000

Dated: January 31, 2006

Between:

G. Shyam Prasad, S/o. G. Rajender
aged about 23 years,
residing at Door No.3-14-545,
New Kothur, Hanumkonda, Warangal District.

… Petitioner

And

The Executive Director,
APSRTC, Karimnagar Zone,
Karimnagar.

… Respondent

Order:

Assailing the proceedings No.P3/684(3)/99-ED-KR, dated 02-02-2000, passed by the respondent, declaring the petitioner as medically unfit for the post of Typist, based on the Medical Certificate dated 11.11.1999, issued by the Medical Officer, APSRTC Hospital, as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India, the petitioner filed the present writ petition.

2. The petitioner belongs to Scheduled Caste. He was affected with polio to the left leg at childhood. He studied upto Intermediate and passed Typewriting Higher Grade examination. In response to a

notification, issued by the respondent, inviting applications for filling up the vacant posts of Typist for SC's and ST's and other categories, he submitted his application. The respondent called the petitioner for written examination, which he appeared on 29-06-1999. He having passed in the written examination, the respondent called him for oral interview, in which he was selected. Pursuant to his selection, the respondent directed him to appear before the Medical Board for medical examination. The petitioner appeared before the Medical Board for examination on 11.11.1999, and the Medical Board having examined the petitioner, issued Medical Certificate dated 11.11.1999, declaring the petitioner medically unfit for the post of Typist as he is suffering from post-polio Paralysis and RDDV (BE). Based on the said Medical Certificate, the respondent passed the impugned order, informing the petitioner that he is not selected for the post of Typist.

3. The respondent filed counter-affidavit. The respondent while admitting that the Selection Committee selected the petitioner to the post of Typist vide proceedings dated 17.07.1999, subject to his medical fitness, submitted that the Medical Board, which examined the petitioner, issued Medical Certificate dated 11.11.1999 stating that the petitioner is unfit to hold the posts falling under 'X1' category posts due to post-polio Paralysis and RDDV (BE). On the representation of the petitioner dated 19.11.1999, he was re-directed for medical examination, but the Senior Medical Officer (A), APSRTC Hospital, Tarnaka, vide letter dated 22.11.1999, informed that unless the petitioner is selected under PHC quota, he may not be re-directed for examination for holding the posts falling under 'X1' category. that stating. It is submitted that since the petitioner did not satisfy the medical fitness standards, the petitioner was informed that he was not

selected, and more so when his selection made by the Selection Committee, was subject to his medical fitness.

4. The learned counsel for the petitioner contends that the impugned order passed by the respondent based on the Medical Certificate, informing the petitioner that he is not selected for the post of Typist as he is suffering from post-Polio Paralysis and RDDV (BE), is illegal and arbitrary. He submits that the petitioner passed the written test and also qualified in the oral interview, and rejecting his case for appointment to the post of Typist on the ground that he is suffering from post-polio paralysis, without reference to the nature of job to be performed by him on selection, is illegal and arbitrary. He thus prayed that the impugned order be set aside and the respondent be directed to appoint him by issuing necessary appointment orders.

5. The learned Standing Counsel for the respondent reiterated the counter averments. She submitted that the Medical Officer having examined the petitioner, issued Medical Certificate dated 11-11-1999, stating that the petitioner was found unfit for 'X1' category due to post-Polio Paralysis and RDDV (BE). Thereafter, he was re-directed for further medical examination, and the Senior Medical Officer, APSRTC Hospital, Tarnaka, who examined him, vide letter dated 22-11-1999 informed that unless the petitioner is selected under PHC quota, he may not be re-directed to their hospital for examining him. The petitioner was informed the same. As the petitioner did not satisfy the medical standards prescribed for the post of Typist, his case was rejected. She submitted that the petitioner being a physically challenged person, cannot be appointed against a vacancy earmarked for open category candidates. She thus prayed that the writ petition be dismissed.

6. On the last occasion, learned Standing Counsel was directed to produce the procedure of medical examination on the basis of which the case of the petitioner was rejected.

7. Learned Standing Counsel, today, placed before this Court a copy of the Medical Manual, APSRTC. She contends that Physical, Measurements for various cadres for Direct Recruitment as per Recruitment Regulations, is done as per the measurements provided in Annexure-II. At the time of physical examination, the examiner should satisfy himself that the employee is free from any defect likely to interfere with the efficient performance of his duties, and if any defect is found, it should be remedied by treatment or operation, prior to final decision.

8. The petitioner is affected with post-polio Paralysis and RDDV (BE). Though he is a physically challenged, educationally and socially backward person, he had competed with open category candidates for appointment to the post of Typist, which is a 'X1' category post. The petitioner, who appeared for the written test and oral interview on par with other physically abled candidates, passed in the written test as well as oral interview. The Selection Committee selected the petitioner for appointment to the post of Typist subject to medical fitness. The petitioner appeared before the Medical Board for medical fitness examination, but the Medical Board which examined the petitioner issued certificate stating that the petitioner is not medically fit to hold the post of Typist as he is suffering from post-polio Paralysis and RDDV (BE).

9. There is no doubt that the petitioner is suffering from post-polio Paralysis and RDDV (BE), but the fact remains, that despite his

physical deformity, the petitioner competed with open category and able bodied candidates and fared well in the examination. The fact that the petitioner could fare well in the open competition on par with other able bodied persons, is itself an indicia that the petitioner stands second to none. The respondent, except relying on the medical certificate issued by the Medical Board, disqualifying the petitioner to hold the post of Typist on the ground that he is suffering from post-polio Paralysis and RDDV (BE), have not placed any material to show how the disability of the petitioner would interfere in the proper discharges of the duties assigned to him, and more so when the job to be performed by the petitioner as a Typist, is sedentary, requiring him not to move from a particular place.

10. Though the respondent contends that the petitioner failed to satisfy the physical standards prescribed in Annexure-II, the fact remains, they only relate to the vision of a candidate, and they have nothing to do with the physical disability of the petitioner. This apart, the physical handicap of the petitioner, if any, would be only a disqualification to hold the posts mentioned in categories A1, A2, M1, W1 and O1, as provided in Rule XIII(i) of the Medical Manual. The physical handicap of the petitioner is not at all a disqualification in respect of posts other than the above, as provided in Rule XIII(ii), and disqualification, if any, to hold the posts other than the categories mentioned in XXX(i) would be only if the disability interferes in the proper discharge of duties. The Medical Board, though examined the petitioner, and declared the petitioner not fit to hold the post of Typist, did not state as to how the disability of the petitioner would interfere in proper discharge of the duties to him. Having regard to the fact that the petitioner was selected to the post of Typist, falling in category ‘X1’, and the Medical Certificate, issued by the Medical Board, having not

stated how the physical disability of the petitioner would interfere in proper discharge of duties assigned to him, I am of the considered opinion that the respondent based on the Medical Certificate issued by the Medical Board, committed an error in not selecting the petitioner to the post of Typist on the ground that is suffering from post-polio Paralysis and RDDV (BE), and more so when the petitioner having competed with other able bodied candidates in the written test and oral interview, fared well and was selected.

11. The petitioner, though is a physically challenged and educationally and socially backward person, he had competed on par with other able bodied candidates in the open competition, and he having outdone them in the written test and oral interview, the respondent cannot be allowed to contend that since the post for which the petitioner applied is not earmarked for Physically Handicapped Persons, he is not entitled to be selected, and more so when the petitioner being a physically handicapped person, had applied to posts earmarked for reserved and other open candidates. If such contention of the respondent is to be accepted, it would offend the equality clause engrafted in Article 14 of the Constitution of India.

12. In the result, the writ petition is allowed. The impugned order is set aside. The respondent is directed to appoint the petitioner as Typist by issuing necessary appointment orders, without disqualifying him on medical grounds and subject to verification of antecedents, genuineness of original education and caste certificates etc. No costs.

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N.V. RAMANA, J.

January 31, 2006
MRR/KSR